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September 2, 2005

VIA HAND DELIVERY

Hon. Ron Jones, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

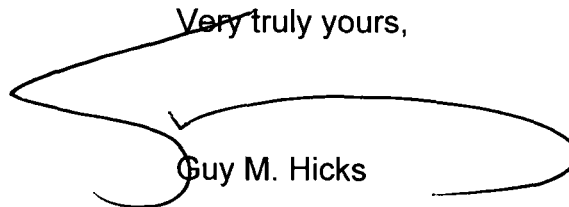
Re *Petition to Establish Generic Docket to Consider Amendments to
Interconnection Agreements Resulting from Changes of Law*
Docket No. 04-00381

Dear Chairman Jones

Enclosed is BellSouth's Response to CompSouth's Motion to Strike. In order to allow the hearing to begin as scheduled at 9.00 a.m. on September 13, BellSouth respectfully requests that the Hearing Officer rule on this *Motion* during the Status Conference on September 8, 2005. Otherwise, the hearing will be delayed by argument and deliberations on this *Motion*. Such delay is unnecessary, particularly given the *Motion's* lack of merit.

Copies of the enclosed have been provided to counsel of record.

Very truly yours,



Guy M. Hicks

GMH nc

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law*

Docket No. 04-00381

**OBJECTION OF BELL SOUTH TELECOMMUNICATIONS, INC. TO
COMPETITIVE CARRIERS OF THE SOUTH, INC.'S MOTION TO
STRIKE EXHIBITS PAT-1 AND PAT-2 TO THE DIRECT TESTIMONY
OF BELL SOUTH WITNESS PAMELA A. TIPTON**

BellSouth Telecommunications, Inc. ("BellSouth") hereby responds and objects to the *Motion to Strike Exhibits PAT-1 and PAT-2 To The Direct Testimony Of BellSouth Witness Pamela A. Tipton*, ("Motion") filed by CompSouth on September 1, 2005.

As explained below, CompSouth's *Motion* lacks merit and should be denied. CompSouth argued strenuously that BellSouth's *Motion for Summary Judgment or Declaratory Relief* should be denied in order to allow the Authority the opportunity to hear all of the argument and evidence before ruling. In that context, CompSouth objected to any rulings without a full-blown evidentiary hearing. Now that the Authority has denied most of BellSouth's *Motion for Summary Judgment*, CompSouth has changed its tune. Now, CompSouth wants evidence stricken from the record prior to the evidentiary hearing and before the Authority has even had the opportunity to hear Pam Tipton's testimony and cross-examination. CompSouth's tactics should not be rewarded.

In order to allow the hearing to begin as scheduled at 9:00 a.m. on September 13, BellSouth respectfully requests that the Hearing Officer rule on this *Motion* during the Status Conference on September 8, 2005. Otherwise, the hearing will be delayed by argument and deliberations on this *Motion*. Such delay is unnecessary, particularly given the *Motion's* lack of merit.

A. The *Motion* Should Be Denied Because It Is Substantively Flawed.

Contrary to CompSouth's representations, BellSouth unequivocally is not using PAT-1 and PAT-2 for the nefarious purposes alleged by CompSouth. Rather, BellSouth is asking the Authority to adopt PAT-1 and PAT-2 to serve as a default agreement for those CLECs that even as late as today have refused to come to the negotiating table. As BellSouth has explained to CompSouth representatives on several occasions, PAT-1 and PAT-2 are *not* intended to trap CLECs that are negotiating with BellSouth or to "prejudice the interests of CompSouth companies that are involved in pending Section 252 arbitration proceedings." For the CLECs who are negotiating, the terms of the negotiation will apply for those issues in PAT-1 and PAT-2 that are not within the scope of this docket. For entirely uncooperative CLECs, however, BellSouth needs a complete Attachment 2 that those CLECs can be compelled to sign.

CompSouth accurately characterizes the efforts of many CLECs on page 3 of the *Motion* when it stated that "[t]here is not a 'standard' ICA that applies to all carriers. Some carrier have negotiated specific treatments of certain issues . . and

the various forms of contracts reflect 'give and takes' that provided the framework for a negotiated ICA."¹ BellSouth intends to honor those negotiations (and negotiations that will no doubt be on-going) for CLECs that have come to the table.

As Ms. Blake described in her deposition, however, there are a multitude of CLECs that have simply refused to negotiate with BellSouth at all. Ms. Blake testified that while BellSouth has 107 TRRO-compliant contracts, "[f]or CLECs that we have failed to fully negotiate, we've got this change of law docket to memorialize a TRRO-compliant agreement, and ... the commission [will have] a default contract, that would be what the parties would amend their contract to include that ... default Attachment 2."² She further confirmed that (1) "the parties are free to negotiate" and (2) "there's no obligation on either party to override that previously executed amendment that may have ... involved one of the issues that may come out in the default entire agreement."³

CompSouth itself seems to have recognized the problem with the CLECs who, unlike the CompSouth members, have refused to negotiate. In its *Motion to Strike* filed recently in Georgia, CompSouth argued that "[i]ssues related to the TRO/TRRO that do not appear on the Issues List **have been worked out** by the parties in various contract formats and using various contract terms."⁴ CompSouth deleted this sentence from its *Motion* in Tennessee, no doubt because it knows

¹ *Motion*, at 3

² *Deposition of Kathy Blake*, Docket No. 19341-U, August 17, 2005, at 14-15.

³ *Id.* at 16.

⁴ *Georgia Motion*, at 6-7

BellSouth has successfully negotiated TRO- and TRRO-compliant agreements and amendments with numerous CLECs in Tennessee. While the CompSouth companies may have come to the negotiating table, that is utterly untrue for the many CLECs which have refused to negotiate. It is for the latter category of CLECs that BellSouth needs the Authority to approve PAT-1 and PAT-2 – not for the CompSouth's of the world who have come to the table to work out these issues.

CompSouth's Motion also fails to inform the Authority that on Tuesday of this week, the Georgia Commission denied the same motion to strike filed in Georgia PSC Docket No. 19341-U. The Georgia Commission found that it would hear cross examination on the issues raised in the Motion and that the parties could also address the issues in their post-hearing briefs.⁵

B. The Motion Should Be Denied Because It Is Procedurally Deficient.

The Authority should deny the *Motion* because the relief sought far exceeds the harm alleged in the *Motion*. Specifically, while CompSouth complains about portions of Exhibits PAT-1 and PAT-2, it asks the Authority to strike the exhibits in their entirety. This, of course, makes no sense. The Authority generally has disfavored motions to strike, preferring instead to take in the evidence and give it the weight to which it believes it is entitled. In this case, CompSouth has asked the Authority to strike even portions of PAT-1 and PAT-2 that CompSouth

⁵ Transcript of Tuesday, August 30, 2005 in Georgia Change of Law Proceeding, PSC Docket No 19341-U at 19 (attached)

concedes are appropriate. Indeed, CompSouth states in its *Motion* that its proposed markup of the Exhibit is “for illustrative purposes only.”⁶ CompSouth admits that it did not properly identify the portions of PAT-1 and PAT-2 that it wants stricken.⁷ Such overbroad and vague relief renders the *Motion* procedurally defective and thus it should be denied on that basis alone. Moreover, in several instances, CompSouth did not propose language to address certain issues in this docket --- thus, if the Authority grants the *Motion*, there will be insufficient evidence in the record to resolve this case.

C. The *Motion* Should Be Denied Because It Is Untimely.

Lastly, the Authority should deny the *Motion* because it is untimely. BellSouth filed PAT-1 and PAT-2 with Ms. Tipton’s direct testimony on July 26, 2005. For some unknown reason, CompSouth has waited five weeks, until September 1, to file this *Motion*, and made no attempt in advance of filing the *Motion* to resolve the perceived issue with BellSouth. CompSouth has offered no explanation at all as to why it waited five weeks to file this *Motion*; for this reason alone, the Authority should deny the *Motion*.

CONCLUSION

For these reasons, BellSouth requests that the Authority deny CompSouth’s *Motion* and consider PAT-1 and PAT-2 in their entirety.

⁶ *Motion* at 6.

⁷ See *Motion*, at 6 (“[t]he mark-up is not intended to capture each and every sentence unrelated to the Issues List”).

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

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BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

In the Matter of:

Generic Proceeding to Examine ISSUES :
RELATED TO BELL SOUTH'S OBLIGATIONS :
TO PROVIDE UNBUNDLED NETWORK : Docket No. 19341-U
ELEMENTS :

Hearing Room 110
244 Washington Street
Atlanta, Georgia

Tuesday, August 30, 2005

The above-entitled matter came on for hearing
pursuant to Notice at 10:00 a.m.

BEFORE:

ANGELA ELIZABETH SPEIR, Chairman
ROBERT B. BAKER, JR., Vice Chairman
STAN WISE, Commissioner
H. DOUG EVERETT, Commissioner
DAVID BURGESS, Commissioner

* * *

1 walk out with language on issues like directory listings.
 2 Lots of issues that have nothing to do with what's actually
 3 before the Commission. And then can tell CLECs, whether we
 4 negotiated or not, that that's the Commission approved
 5 language on that issue. So, we would be happy to work with
 6 BellSouth if they want to identify the actual contract
 7 language that's at dispute in this case. But so far every
 8 time we've asked, we've gotten a representation that it's
 9 the whole thing that needs to be approved. So, I think
 10 that's the core problem.

11 CHAIRMAN SPEIR: All right, thank you, Mr.
 12 Magness. Anyone else have any comments regarding this issue
 13 before I rule?

14 (No response.)

15 CHAIRMAN SPEIR: All right, I did receive and
 16 review the motion to strike. And Mr. Magness, I'm not going
 17 to strike the testimony. The Commission will hear the cross
 18 related to these issues and the parties can address the
 19 issues in their briefs. If CompSouth is correct regarding
 20 these issues, then I'm sure that the Commission's decision
 21 will reflect that.

22 Is there anything else that we need to address
 23 before we get started this morning with opening statements?

24 I did receive the filing actually just this
 25 morning regarding opening statements. And at this time we

CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2005, a copy of the foregoing document was served on the following, via the method indicated:

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